IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5964 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IBRAHIM @ KALU (KALIYO) SHIDARKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 184/2000 Annexure : A passed by Respondent No.2 which he has passed in exercise of powers

conferred upon him under Sec.3(2) of the Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on three different cases for offences punishable under the provisions of Indian Penal Code registered in differet Police Stations in Bharuch District. The detaining authority also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority recorded the statements of two witnesses on 24/3/2000, and that two statements were verified by the detaining authority himself on 10/4/2000 and passed an order of detention on 18/4/2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof.

4. Ms. Subhadraben Patel, the learned advocate for the petitioner has argued that out of three I.P.C. Cases lodged against the detenu, last case was registered as CR.No.I 74/99 in Amod Police Station on 27/7/1999, and thereafter order of detention came to be passed by the detaining authority on 18/4/2000. She has argued that during the period from 27/7/1999 to 18/4/2000, no case is reported to have been lodged against the detenu, and therefore, it cannot be said that the activities of the detenu are prejudicial to the maintenance of public order. She has argued that there is an inordinate delay of period in between date of last case lodged and date of passing of an order of detention on 18/4/2000. The detaining authority has not at all explained this delay for long period taken for passing order of detention, and therefore, continued detention is illegal and bad in law in view of decision in case of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE AND OTHERS, reported in 1997(1) G.L.H. 381.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 18/4/2000 passed by Respondent no.1 which is at Annexure: A is quashed and set aside. The petitioner detenu is

ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 4/10/2000. (H.H.MEHTA,J.)
ccshah